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811038

IN THE DISTRICT COURT OF THE STATE OF UTAH

FIRST JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF RICH

HYRUM NEBEKER and FRANK K. NEBEKER,

Plaintiffs,

vs.

LAKETOWN IRRIGATION CO., an unincorporated association transacting business under a common name; ROUND VALLEY DAM AND CANAL CO., an unincorporated association transacting business under a common name; MEADOWVILLE CANAL CO., an unincorporated association transacting business under a common name; THE STATE OF UTAH, CLAUDE WILLIS, ELLSWORTH JOHNSON and CORA F. JOHNSON, his wife; ELIJAH WILLIS, LANE WILLIS and MRS. LANE WILLIS, his wife, AUSTIN WILLIS and MRS. AUSTIN WILLIS, his wife; LOUISE WILLIS JENCKS; DELINAH WILLIS; JOSEPH CHENEY and SARAH W. CHENEY, his wife; OLIVER WAHLSTROM and ANICE W. WAHLSTROM, his wife; SARAH WATSON MEYERS; RAY LAMBORN; WM. LAMBORN and EFFIE W. LAMBORN, his wife; JOHN LAMBORN and MRS. JOHN LAMBORN, his wife; GEORGE H. ROBINSON and LUCY B. ROBINSON, his wife; JOSEPH ROBINSON; WARREN TAYLOR and ALLEY J. TAYLOR, his wife; ROBERT THOMPSON; MRS. GEO. B. THOMPSON; MERLIN KEARL; ALBERT WESTON and MRS. ALBERT WESTON, his wife; G. N. WESTON and ROSE L. WESTON, his wife; ALFRED KEARL and LULA H. KEARL, his wife; DEWITT JOHNSON and LYDIA W. JOHNSON, his wife; CLARENCE CHENEY and EMMA W. CHENEY, his wife; BEN WESTON and MRS. BEN WESTON, his wife; ANDREW MATTSON and HATTIE H. MATTSON, his wife; OLE MATTSON and CORA F. MATTSON, his wife; CHARLES H. ALLEY and PEARL I. ALLEY, his wife; JOHN S. ALLEY and MRS. JOHN S. ALLEY, his wife; WILLIS E. KEARL and BERTHA L. KEARL, his wife; MARTIN KEARL and CARRIE M. KEARL, his wife; GEORGE W. EARLEY; LUTHER B. REED and PRESCILLA K. REED, his wife; P. D. MOFFAT and KATE J. MOFFAT, his wife; MARY J. KEARL; JOSEPH WESTON and LYDIA M. WESTON, his wife; SARAH J. HENDERSON; AMOS BARKER and CORA E. BARKER, his wife; LAWRENCE D. LAMBORN and JOSEPHINE H. LAMBORN, his wife; MARY KIRK WESTON; FRANK LAMBORN and ETHEL LAMBORN, his wife,

Defendants.

D E C R E E

File # 183

Pursuant to written stipulation of the parties hereto on file herein and findings of fact and conclusions of law having been expressly waived, it is hereby ordered, adjudged and decreed by the court as follows:

That Laketown Big Creek, or Spring Creek, as it is sometimes known, rises in Section 4 of Township 12 North, Range 5 East, Salt Lake Base and Meridian, and flows in a northeasterly direction and empties into the south end of Bear Lake in Section 25 of Township 13 North, Range 5 East. That said stream is fed by various springs and tributaries, all of the waters of which have been appropriated and beneficially used by the parties hereto prior to 1900, and it is the purpose of this Decree to adjudicate the relative rights of the respective parties to this action to the use of all water which is now or may hereafter become a part of the waters of said stream from any source whatsoever, and said Decree shall bind the heirs, administrators, executors, assigns and grantees and successors in interest of the parties hereto.

Unless herein otherwise specified, the rights decreed herein are irrigation rights and include the right to divert and use water for irrigation and agricultural purposes and as a part thereof for culinary, domestic and stock-watering purposes, throughout the irrigation season of each year, which is defined as that portion of each calendar year which commences at 7 a. m. on the first day of March and closes at 7 a. m. on the first day of December. From October 15th to April 15th the rights herein decreed are subject to the right of Alfred Kearn to use 12 cubic feet per second of the flow of said stream for power purposes as hereinafter provided in the schedule of rights.

The several parties hereto are also hereby adjudged and

decreed to have the right to divert and use so much of the water of said stream during the non-irrigation season, i.e., between the 1st day of December at 7 a. m. and the 1st day of the succeeding March at 7 a. m., as they may reasonably require for their domestic, culinary and stock-watering purposes, so long as they do not interfere with said power rights of Alfred Kearn.

Each and every party hereto, their successors in interest as aforesaid, and their servants, agents, employes and attorneys are hereby perpetually enjoined and restrained from any and all interference with or diversion or use of said waters, except in the manner and to the extent and for the purposes provided in this Decree, whenever such interference, diversion, or use would interfere with the diversion or use of the water awarded by this Decree to any of the other parties to this action.

The parties hereto and their successors in interest shall install and maintain suitable and efficient headgates, controlling works, and measuring devices at their respective points of diversion, and all water herein allotted and decreed shall be measured at said points of diversion. All such devices shall be of such design as to accurately measure the amount of water diverted in cubic feet per second or fraction thereof and shall at all times be subject to the inspection of any party hereto or their successors in interest and to the public officials or water master having jurisdiction over the distribution and diversion of said water. No water shall be diverted except through ditches or canals provided with such measuring and controlling devices.

Reference is hereby made to a certain map attached to and filed with and hereby made a part of this Decree for the purpose of showing the lands now irrigated by the parties hereto. Nothing in said map contained shall vary or alter the terms of the Decree. Said map is entitled "Map of Lands

Irrigated, Laketown and Round Valley, Rich County, Utah.
From Big Spring and Big Creek, Surveyed September 1932. Sum-
ner G. Margetts, Engineer." Said map is referred to in this
Decree as the Margetts Map.

The Laketown Irrigation Co., The Round Valley Dam and
Canal Co., The Meadowville Canal Co. and the Lower Meadow-
ville Canal Co. are each corporations and each and every party
hereto who uses water diverted from said stream by means of
the dams, canals, ditches or pump of said companies, or either
of them, as shown on the Margetts Map, and the schedule of
rights herein, has no right, title or interest in or to the
waters of said stream except as a stockholder in said compan-
ies, or either of them, unless expressly provided otherwise
herein.

The rights of the various parties who use water belong-
ing to and diverted by said companies, or either of them, are
determined as among themselves by the number of shares of stock
each of said parties own in said corporation and not by the
respective acreage owned and watered by each as shown on said
Margetts Map. This Decree does not adjudicate the respective
rights of the various stockholders in said corporations as
between each other. It does adjudicate the rights of said
corporations and each of them as against all other parties
hereto.

The waters of said stream and its tributaries are here-
by allotted and decreed for the various beneficial uses here-
in specified, without waste to the parties herein named in the
following "Schedule of Rights" to their successors and assigns
in the amounts and for the purposes and in accordance with
the priorities established and prescribed in this schedule.

SCHEDULE OF RIGHTS

C. F. S. is used in this Schedule to designate a flow of one cubic foot per second of time:

NAME OF OWNER DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
1. Alfred Kearn - power right- 1880- December 1	12 c.f.s.	Said water to be diverted at a point S. 35° W. 3725 feet from the NE cor. of Sec. 4, Township 12 N. Range 5 E., S.L.M. (Upper Dam) and conveyed thru the Upper Round Valley Canal for a distance of not more than 300 yards and to be used from Oct. 15th to the following April 15th inclusive of each season, for the propulsion of water machinery and returned to said stream at a point not to exceed 300 yards from the point of diversion.
2. Round Valley Dam and Canal Company, 1876 - May 15	4.4 c.f.s.	Said water to be diverted from the South side of said stream at a point S. 35° W. 3725 feet from the NE cor. of Sec. 4, Township 12 N., Range 5 E., S.L.M. (Upper Dam) and used from April 15th to October 15th for the irrigation of 612.8 acres of land as shown on the Margetts Map.
3. (a) Meadowville Canal Co. 1876 - May 15	2.7 c.f.s.	Said water to be diverted from the North side of said stream at a point S. 35° W. 3725 feet from the NE cor. of Sec. 4, Township 12 N., Range 5 E., S.L.M. (Upper Dam) and used from April 15th to October 15th for the irrigation of 307.3 acres of land as shown on the Margetts Map.
(b) 1897 - May 15	1. c.f.s.	
4. (a) Laketown Irrigation Company 1876 - May 15	2. c.f.s.	Said water to be diverted from said stream by means of a pump at a point N. 16° W. 2550 feet from SE cor. of Sec. 35, Township 13 N., Range 5 E., S.L.M. (Laketown Pump) and used to irrigate 405.4 acres of land as shown on the Margetts Map.
(b) 1896 - July 1	1. c.f.s.	

5. (a) Joseph Cheney .84 c.f.s.
1877 - July 1
(Eighty-four hundths)
- (b) 1897 - May 1 1.68 c.f.s.
- Said water to be diverted from said stream at a point N. $30\frac{1}{2}^{\circ}$ W. 3150 feet from SE cor. of Sec. 25, Township 13 N., Range 5 E., S.L.M. (Cheney Dam), and used to irrigate 83.7 acres of land as shown on the Margetts Map.
6. (a) Alfred Kearl- 3.52 c.f.s.
1888 - July 13
- (b) 1897 - May 15 1.66 c.f.s.
- Said water to be diverted from the South side of said stream at a point S. 30° W. 3520 feet from the NE cor. of Sec. 4, Township 12 N., Range 5 E., S.L.M. (Lower Dam) and used during the irrigation season to irrigate 320.4 acres of land shown on the Margetts Map, provided the water designated (b) herein or an equal amount of the (a) right may, at the option of the owner, be diverted from the South side of said stream at either the upper or lower dams.
7. (a) Dewitt Johnson .71 c.f.s.
1888 - July 13
(Seventy-One hundths)
- (b) 1897 - May 15 .34 c.f.s.
(Thirty-four hundths)
- Said water to be diverted from the South side of said stream at a point S. 30° W. 3520 feet from the NE cor. of Sec. 4, Township 12 N., Range 5 E., S.L.M. (Lower Dam) and used during the irrigation season to irrigate 63.7 acres of land shown on the Margetts Map, provided the water designated (b) herein or an equal amount of the (a) right may, at the option of the owner, be diverted from the South side of said stream at either the upper or lower dams.
8. (a) Lower Meadowville 4.23 c.f.s.
Canal Company
1888 - July 13
- (b) 1897 - May 15 2. c.f.s.
- Said water to be diverted from the North side of said stream at a point S. 30° W. 3520 feet from the NE cor. of Sec. 4, Township 12 N., Range 5 E., S.L.M. (Lower Dam) and used during the irrigation season to irrigate 790.1 acres of land as shown on the Margetts Map, provided the water designated (b) herein or an equal amount of the (a) right may, at the option of the owner,

- be diverted from the North side of said stream at either the upper or lower dams.
9. (a) Hyrum Nebeker 3.78 c.f.s.
Frank K. Nebeker
1889 - June 3
- (b) 1897 - June 1 7.56 c.f.s.
10. (a) Claude Willis 1.25 c.f.s.
Elijah Willis
Lane Willis
Austin Willis
Cheney Willis
Louise Willis Jencks
Delinah Willis
1889 - June 3
- (b) 1897 - June 1 2.5 c.f.s.
11. (a) Joseph Cheney .1 c.f.s.
1889 - June 3 (One-tenth)
- (b) 1897 - June 1 .2 c.f.s.
(Two-tenths)
12. (a) C. H. Alley 1.28 c.f.s.
1891 - June 3
- (b) 1897 - June 1 2.56 c.f.s.
13. (a) Andrew Mattson 1.18 c.f.s.
1891 - June 3
- (b) 1897 - July 1 2.36 c.f.s.
- Said water to be diverted from said stream at a point S. 8° E. 1180 feet from the NW cor. of Sec. 36, Township 13 N., Range 5 E., S.L.M. (Nebeker Dam) and used during the irrigation season to irrigate 378 acres of land as shown on the Margetts Map.
- Said water to be diverted from said stream at a point S. 8° E. 1180 feet from the NW cor. of Sec. 36, Township 13 N., Range 5 E., S.L.M. (Nebeker Dam) and used during the irrigation season to irrigate 125 acres of land as shown on the Margetts Map.
- Said water to be diverted from said stream at a point S. 8° E. 1180 feet from NW cor. of Sec. 36, Township 13 N., Range 5 E., S.L.M. (Nebeker Dam) and used during the irrigation season to irrigate 10.8 acres of land as shown on the Margetts Map.
- 3/4ths of said water to be diverted from the stream at a point S. 8° E. 1180 feet from NW cor. Sec. 36, Township 13 N., Range 5 E., S.L.M. (Nebeker Dam) and 1/4 of said water to be diverted from the Cheney Dam, and used to irrigate 128 acres of land as shown on the Margetts Map.
- 3/4ths of said water to be diverted from the stream at a point S. 8° E. 1180 feet from NW cor. Sec. 36, Township 13 N., Range 5 E., S.L.M. (Nebeker Dam) and 1/4 of said water to be diverted from the Cheney Dam, and used to irrigate 117.9 acres of land as shown on the Margetts Map.

THE STATE OF UTAH
COUNTY OF KANE
BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Nothing herein contained shall alter or abrogate the contract heretofore entered into, dated June 27, 1912, between Joseph Weston and Lydia M. Weston, his wife, parties of the first part, and Aquila Nebeker, Hyrum Nebeker, Frank K. Nebeker, Horace G. Nebeker and George Willis, parties of the second part.

Reference is hereby made to a certain dam designated "Narrows Dam" on the Margetts Map, and situated North 48° West 3275 feet from the Southeast corner of Section 35, Township 13 North, Range 5 East, S. L. M. It is hereby decreed that the owners of all secondary water rights designated as (b) rights in the foregoing Schedule and their successors in interest shall have the perpetual right to store water in said dam subject to the terms hereof. Said right is hereby decreed to said owners of secondary water as tenants in common. Each owner owns that portion of the total storage and flood rights herein decreed represented by the fraction obtained by dividing the total secondary water (b) rights by the secondary water (b) right owned by each user respectively. The owners of said flood and storage rights shall have the right to close said Narrows Dam on April 1st each year and may raise the water surface at said dam not to exceed 3 feet and shall so regulate said dam that said stream will be returned to its natural level on or before May first of each year. The owner of said flood and storage rights may close said dam on May fifteenth, each year, and may raise the water surface at said dam not to exceed three feet and shall so regulate said dam that said stream will be returned to its natural level on or before July 5th of each year. The natural level of said stream at the point of said dam is hereby decreed to be 5942 feet above sea level, said elevation being referred to U.S.G.S. Bench Mark located in the Post Office wall at Laketown, Utah, and being 5988 feet above sea level.

Said owners are further decreed the perpetual rights of ingress and egress from the highway located southeast of said dam and over and upon the land separating said highway from said dam, necessary or convenient for the inspection, regulation, repair, and reconstruction of said dam. The owners of any and all land flooded, by their signature to the stipulation which embodies this Decree, have forever waived all rights to damage on account of such flooding and the owners of said right to flood shall repair, maintain and operate said dam at their sole expense and without remuneration from the owners of land located above said dam which may be benefited by the impounding herein decreed. The flood easement hereby created shall inure to the benefit of the successors and assigns of the owners of said secondary water rights and shall bind the successors and assigns of the owners of the land, which is or may be flooded or damaged by the impounding of water herein decreed.

The owners of said secondary water and their successors in interest are further decreed the right during the period herein specified and not otherwise to impound and store any water, either primary or secondary, to which they are entitled under this Decree, not to exceed in any event their full proportion of the storage right determined as hereinbefore set forth, in said reservoir and to withdraw the same therefrom from time to time as needed or required by them.

It is further decreed that at all times when there is storage water sufficient to satisfy all primary rights of users whose point of diversion is below said storage reservoir, together with the secondary rights of Laketown Irrigation Company and Joseph Cheney, that the (b) rights of those whose point of diversion is above said storage reservoir may then be diverted through their respective points of diversion. Nothing herein contained shall be construed to require users be-

low said storage reservoir to store any water to which they are entitled, either primary or secondary, in said reservoir, nor to prevent any appropriator below said storage reservoir from withdrawing primary and secondary water decreed to such appropriator herein from said reservoir.

Water diverted from either of the dams designated in the Schedule of Rights as "Upper Dam" or "Lower Dam" and used upon lands lying south of said creek shall not be diverted from either of said dams and used upon lands lying north of said creek without the unanimous consent of the parties whose lands lie on the south side of said creek and who divert water from either of said dams. Water diverted from either the upper or lower dams and used upon lands lying north of said creek shall not be diverted from either of said dams and used upon lands lying south of said creek without the unanimous consent of the parties whose lands lie on the north side of said creek and who divert water from either of said dams. Nothing herein contained shall be construed as limiting the rights of the parties hereto, by agreement between all parties in interest, to use water herein decreed to those parties respectively, by rotation among themselves at such time and in such manner as they may determine, provided that in so doing they do not infringe upon the rights of other appropriators as herein described.

The Court hereby retains jurisdiction of this cause to make all reasonable orders and rules for the enforcement of this Decree.

Done in open court this 29 day of April, 1935.

William C. Harris
Judge.